



**DECLARATION UNDER 37 C.F.R. § 1.132**

Sir:

WE, DAVID T. CUIEL, VICTOR KRASNYKH, RAMON ALEMANY, AND IGOR DMITRIEV, DECLARE AND STATE THAT:

1. We are the co-inventors of the subject matter described and claimed in the present patent application.

2. An abstract entitled, "VEGF Promoter-based conditionally replicative adenoviruses are useful for the treatment of lung cancer" Molecular Therapy, May 2003, Vol. 7, No. 5, Pg. S420 (hereinafter "Takayama et al."), names eight authors: Koichi Takayama, Junji Uchino, Akiko Ikegami, Paul N. Reynolds, Yasuo Adachi, Lioudmila Kaliberova, Victor N. Krashykh, And David T. Curiel. As stated above, the co-inventors of the subject matter described and claimed in the present invention are D.T. Curiel, V. Krasnykh, R. Alemany, and I. Dmitriev. Thus, the authors of Takayama et al. are not "others" as defined by 35 U.S.C. § 102(a) as to the inventive entity of this application, as two of the inventors are named authors of Takayama et al.

3. As is known in the scientific community, persons are or are not included as authors on scientific articles for reasons that do not involve inventorship. Any work reported in Takayama et al., particularly work that may be common to the present application, was performed by or under the direction, supervision or control of the inventors D.T. Curiel and V. Krasnykh, on the present application. Co-authors K. Takayama, J. Uchino, A. Ikegami, P.N. Reynolds, Y. Adachi, L. Kaliberova did not make an independent inventive contribution to the invention claimed in this application.

4. Thus, we are advised and therefore believe that since the authors of Takayama et al. are not "others" as to the present inventive entity, this document is not available as a reference against the present patent application. We thus respectfully request that rejections based on this document be reconsidered and withdrawn.

5. We further declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine, or imprisonment, or both, under Section 1001 of Title 18 of the United States

Code and that such willful false statements may jeopardize the validity of the present application or any patent issued thereon.

Date: 12/21/05

  
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DAVID T. CURIEL

Date: 1

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VICTOR KRASNYKH

Date: \_\_\_\_\_

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RAMON ALEMANY

Date: 12/21/05

  
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IGOR DMITRIEV